No. 85-588

In the Supreme Court of the United States

OCTOBER TERM, 1985

THE UNIVERSITY OF TENNESSEE, et al., *Petitioners*,

v.

ROBERT B. ELLIOTT, *Respondent*.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

Of Counsel
W. J. MICHAEL CODY
Attorney General & Reporter
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219-5025

JOHN L. SOBIESKI, JR.
Professor of Law
The University of Tennessee
1505 W. Cumberland Avenue
Knoxville, Tennessee 37996-1800

BEAUCHAMP E. BROGAN*
General Counsel
ALAN M. PARKER*
Associate General Counsel
CATHERINE S. MIZELL
Associate General Counsel
The University of Tennessee
810 Andy Holt Tower
Knoxville, Tennessee 37996-0184
(615) 974-3245

G. RAY BRATTON
1620 First Tennessee Bank Bldg.
165 Madison Avenue
Memphis, Tennessee 38103

N. RICHARD GLASSMAN*
JOHN BARRY BURGESS*
26 N. Second Street
Memphis, Tennessee 38103
Attorneys for Petitioners
*Counsel of Record

TOMMY COLEY
532 Smith Lane
Jackson, Tennessee 38301
Pro Se Petitioner

Petition for Certiorari Filed Oct. 3, 1985
Certiorari Granted Dec. 2, 1985

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Jan. 14, 1982—Plaintiff Elliott's original complaint filed in U. S. District Court for the Western District of Tennessee, Jackson Division.

Feb. 18, 1982—Defendant University of Tennessee's Motion to dissolve restraining order, to dismiss complaint or for summary judgment, with disciplinary charge letter dated December 18, 1981, attached as Exhibit L to affidavit of Mr. Lloyd Downen, filed.

Oct. 24, 1983—Plaintiff's motion for TRO and/or temporary stay of agency order and for preliminary injunctive relief filed.

Oct. 24, 1983—Initial Order of Administrative Law Judge filed as Attachment A to plaintiff's motion for TRO and/or temporary stay of agency order.

Oct. 24, 1983—Final Agency Order filed as Attachment C to plaintiff's motion for TRO and/or temporary stay of agency order.

Feb. 6, 1984—Defendants' amended motion for summary judgment filed.

May 2, 1984—District Court's Memorandum Decision on defendant's motion for summary judgment filed.

May 8, 1984—Judgment of the District Court filed.

July 9, 1985—Opinion and Judgment of the Court of Appeals for the Sixth Circuit filed.

PLAINTIFF'S COMPLAINT

Filed January 14, 1982

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE
JACKSON DIVISION

ROBERT B. ELLIOTT,
Plaintiff
VS.
THE UNIVERSITY OF TENNESSEE
P. O. Box 1071
Knoxville, Tennessee 37901
THE UNIVERSITY OF TENNESSEE
INSTITUTE OF AGRICULTURE
P. O. Box 1071
Knoxville, Tennessee 37901
THE UNIVERSITY OF TENNESSEE
AGRICULTURAL EXTENSION SERVICE
P. O. Box 1071
Knoxville, Tennessee 37901
M. LLOYD DOWNEN, DEAN
UNIVERSITY OF TENNESSEE
AGRICULTURAL EXTENSION SERVICE
P. O. Box 1071
Knoxville, Tennessee 37901
WILLIS W. ARMISTEAD, VICE
PRESIDENT FOR AGRICULTURE
UNIVERSITY OF TENNESSEE
P. O. Box 1071
Knoxville, Tennessee 37901
EDWARD J. BOLING, PRESIDENT
UNIVERSITY OF TENNESSEE
P. O. Box 1071
Knoxville, Tennessee 37901

HAYWOOD W. LUCK, DISTRICT
SUPERVISOR
UT AGRICULTURAL EXTENSION SERVICE
605 Airways Boulevard
Jackson, Tennessee 38301
CURTIS SHEARON, EXTENSION LEADER
UT AGRICULTURAL EXTENSION SERVICE
309 North Parkway
Jackson, Tennessee 38301
BILLY DONNELL
Highway 70
Jackson, Tennessee 38301
ARTHUR JOHNSON, JR.
Malesus, Tennessee
MRS. NEIL SMITH
Matthews Road
Jackson, Tennessee 38301
JIMMY HOPPER,
Denmark Road
Jackson, Tennessee 38301
MRS. ROBERT CATHEY
Oakfield, Tennessee
MURRAY TRUCK LINES, INC.
519 E. Chester
Jackson, Tennessee 38301
TOM KORWIN, SHOP MANAGER
Murray Truck Lines, Inc.
519 E. Chester
Jackson, Tennessee 38301
and
TOMMY COLEY
Old Denmark Road
Jackson, Tennessee 38301,
Defendants

COMPLAINT

1. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U.S.C., Secs. 1331 and 1343, this being a suit wherein the matter in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs, arising under the Constitution and laws of the United States, and this being a suit in equity authorized by law, Title 42, U.S.C. Sec. 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges, and immunities secured by the Constitution and laws of the United States; and to recover damages and other relief under the provisions of said 42 U.S.C., Sec. 1983. The rights, privileges and immunities sought to be redressed by this action are rights, privileges and immunities secured by the First and Thirteenth Amendments, and by the due process and equal protection clauses of the Fourteenth Amendment, to the Constitution of the United States, by Title 42 U.S.C., Secs. 1981, 1985, 1986, 1988 and 2000d and e, as hereinafter more fully appears. Pendent jurisdiction over state law questions is invoked.

2. At all times material herein the following was true:

(a) plaintiff, Robert B. Elliott, hereafter plaintiff, was a black citizen of and residing in Gibson County, Tennessee, and the United States of America, employed as an Agricultural Extension Agent by the Agricultural Extension Service of the University of Tennessee Institute of Agriculture, identified more particularly hereinafter.

(b) defendant, The University of Tennessee, hereafter defendant UT, was an institution of higher learning and a public body corporate established by law of the State of Tennessee as a land grant institution under the Federal Land Grant Act of 1862 for white students only and subsequently desegregated involuntarily by Federal Court Decisions under the Fourteenth Amendment to the Constitution of the United States.

(c) the defendant, Agricultural Extension Service of The University of Tennessee Institute Of Agriculture, hereafter defendant AES, was an administrative agency or department of The University of Tennessee established by State Law to take advantage of Federal monies and services made available to the State under the provisions of the Smith Lever Act of 1914, as amended (7 U.S.C., Sec. 341 et seq.) It is a public agency.

(d) defendants, Edward J. Boling, Willis W. Armistead and M. Lloyd Downen, were President, Vice President for Agriculture, and Dean of the Institute of Agriculture, of defendant UT respectively and are hereafter referred to as defendants Boling, Armistead and Downen, respectively. In said capacity they are charged with administrative responsibilities at the levels indicated for the operation of defendants UT and AES.

(e) defendant, Haywood W. Luck, is a District Supervisor of defendant AES in administrative charge of its operations in several West Tennessee counties incuding Madison County, the County in which plaintiff is employed by defendant AES.

(f) defendant, Curtis Shearon, is an Extension Leader employed by defendant AES and in charge of its Madison County Office.

(g) defendants, Billy Donnell, Arthur Johnson, Jr., Mrs. Neil Smith, Jimmy Hopper and Mrs. Robert Cathey, are members of the Agricultural Extension Service Committee, hereafter AESC of Madison County, Tennessee, an agency utilized by defendant AES in its operations in said County.

(h) defendant, Tommy Coley, is a citizen of Madison County, Tennessee, used by said defendant AES in its operations in Madison County, Tennessee.

(i) defendant, Murray Truck Lines, Inc., is a corporation, operating in Madison County, Tennessee, with business offices at 519 East Chester Street, Jackson, Tennessee 38301 and defendant, Tom Korwin, is Shop Manager and, on information and belief, an officer or managing agent of said defendant, Murray Truck Lines, Inc. Said defendants are hereafter called respectively defendants Murray and Korwin.

(j) all defendants are white and are sued herein both in their official and individual capacities.

3. This is a proceeding for preliminary and permanent injunctive relief and for damages by plaintiff against all defendants seeking:

(a) an injunction restraining defendants, UT, AES, Boling, Downen, Armistead, Luck, Shearon, Donnell, Johnson, Smith, Hopper, Cathey and Coley, from discriminating or acting against plaintiff or any other person or persons employed, utilized or affected in any way in any agricultural extension or related programs operated or participated in by any of said defendants in the State of Tennessee on account of race or color or in a racially discriminatory manner; and from failing and refusing to disestablish existing racial discrimination and

segregation in the operation of said AES programs including but not limited to the compensation and job assignments of black personnel, the limitation of or racial discrimination or segregation in the program benefits made available to black citizens who are the intended beneficiaries of said AES programs or involved therein in any way, and the disestablishment of existing racial segregation and discrimination in all of said programs administered by or connected with any of said defendants, including but not limited to back pay and other relief for past discrimination to plaintiff and other class members so entitled.

(b) specific preliminary and permanent injunctive relief requiring all defendants herein to cease and desist from attempts to discharge or cause the discharge of plaintiff and/or to otherwise penalize him pursuant to false allegations of inadequate job performance and inadequate job behavior and to punish plaintiff by derogatory warning letters and supervisory harassment because of his race and because of his protest against racial discrimination by various of the defendants including but not limited to defendants, Coley, Murray, Korwin and Shearon.

(c) injunctive relief against the use of Federal or other public funds for purposes unauthorized by law, including but not limited to said racial discrimination and segregation.

(d) restraint of the defendants and each of them from conspiring to do any of the foregoing acts or from participating in or causing such acts to be done.

(e) damages against the defendants in sum of One Million Dollars ($1,000,000.00) for deprivation of his rights under the statutory and constitutional provisions

cited in paragraph 1 hereinabove, by the actions and omissions of defendants charged herein.

4. Plaintiff brings this action, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure on his own behalf and on behalf of all other persons in Tennessee who are similarly situated and/or affected by the policies, practices, customs and usages complained of herein which violate not only the rights of plaintiff and other black employees, applicants for employment, continuance of employment or re-employment as personnel in said defendants UT and AES, but also the rights of black infant and adult citizens who are intended beneficiaries of said AES, who are subjected to racial discrimination and segregation therein by virtue of the discriminatory restraints upon plaintiff and other AES personnel and otherwise, as to whose rights there is a close nexus with those of plaintiff and other black AES personnel here sought to be vindicated and in whose behalf plaintiff also brings this suit. The members of the class on whose behalf plaintiff sues are on information and belief more than 200 persons and are so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class, the claims of the plaintiff are typical of the claims of the class and the plaintiff will fairly and adequately protect the interest of the class. Further this action meets the prerequisites of Rule 23(b)(1) and the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. For many years past, the defendant UT, acting under color of the laws of the State of Tennessee, including State segregation statutes, pursued a policy, practice,

custom and usage of operating an exclusively white institution of higher learning in the State of Tennessee and, in connection therewith, also operated an exclusively white Institute of Agriculture which in turn established and/or operated an exclusively white Agricultural Extension Service taking advantage of and using the Federal funds available under said Smith Level Act of 1914. After Congress established the Act of 1890 requiring that Federal funds be distributed also to black State Institutions, the defendant UT sought and continued to receive virtually all Federal Land Grant Funds despite the existence of a black Land Grant Institution at Tennessee State University. The AES was and is headed by defendant Downen with the majority of administrative personnel and specialists quartered at the UT Campus. For supervision purposes defendant AES is divided into five districts each having oversight responsibilities for 16 to 22 of 95 County Offices established by defendant UT throughout the State. The District Offices are headed by a District Supervisor and the County Offices are headed by an Extension Leader. Before the Civil Rights Act of 1964, notwithstanding the decision of the Supreme Court of the United States in the Segregation Cases, defendant UT continued to permit AES to be organized and to provide services through a dual system whereby black employees served blacks and white employees generally served whites. The white staff was quartered at UT Knoxville and the black staff was quartered at the YMCA Building in Nashville. On information and belief it was only after prodding by Federal Officials that the dual system was merged sometime after 1964. Nevertheless, defendant AES continued and continues to discriminate in the following particulars:

(a) failure and refusal to implement an effective affirmative action plan as required by law;

(b) insufficient action to integrate and eliminate racial discrimination in homemaker demonstration clubs and other educational activities;

(c) failure and refusal to racially integrate and eliminate racial discrimination and segregation in 4-H Clubs and their activities and programs;

(d) failure and refusal to address low minority participation in agricultural programs and community resource development programs;

(e) persistent refusal to eliminate blatant discrimination against black persons in hiring, job assignment and actual salaries;

(f) blatant discrimination against black employees in promotions, training and continuing education;

(g) discrimination in the establishment and operation of agricultural extension committees wherein black citizens are either excluded or limited in their membership and said committees are permittted to discriminate racially against black AES personnel and against black citizens entitled to the benefit of the program;

(h) permitting discrimination against black participants in AES programs by local white officials including but not limited to Judges in educational programs sponsored by defendant AES.

6. Plaintiff was employed by defendant AES as an Assistant Extension Agent on 12 September 1966 and assigned to the Madison County Office where he has been employed ever since. At time of said employment he was a 1962 graduate of Tennessee State University with a BS in Agronomy. He was promoted to Associate Extension Agent on 1 July 1974 and still holds that position.

Although the racially dual system had obstensibly merged by the time of his employment racial segregation continued in that plaintiff and other black Extension Agents were assigned almost exclusively to work with predominantly black citizens. When schools were segregated racially black agents served separate black 4-H Clubs. When the schools were desegregated black agents, including plaintiff, were relieved of 4-H Club assignments and assigned to a previously non-existent make-shift job designated as "working with low income or small farm familites" who turned cut to be predominantly black. The AESC which materially affects AES operations and influences the employment and assignment of its personnel, was exclusively white in most counties, including Madison, until 1975 when plaintiff protested and, notwithstanding said protest, is still exclusively white in many counties. On information and belief there are no black personnel in the AES above the level of Extension Agent in the entire State of Tennessee except for one black woman employed as a Nutrition Specialist in the Home Office at Knoxville. The West Tennessee Experiment Station, which has approximately 50 personnel, has only 3 black employees: a secretary, farm worker and janitor respectively. Plaintiff's complaints about such racial discrimination included the following:

(a) oral complaint against all-white AESCs about 1975 resulting in first historical appointment of a single black citizen on the Madison County AESC. A second black person became a member only by virtue of election by the County Commission of one of its black members as a committee member about three years ago.

(b) written complaint on 23 January 1981 placed in the Agency's Civil Rights file protesting racial discrim-

ination in defendant Shearon and Madison County AESC failing and/or refusing to utilize and treat in an equitable fashion black leaders, students and staff personnel in connection with 4-H Club events.

(c) oral protest in 1967, 1968 and thereafter to and including 1981 of the refusal of AES staff members and local white AESC members to accord black citizens and staff personnel the right to be called Mr. and Mrs. on the same basis as white personnel.

(d) an oral protest about 1978 of the use by a Knoxville UT Administrative Official of the term "great white hope" in referring to job goal aspirations when speaking to an integrated group of extension agents in West Tennessee.

(e) a written complaint by letter dated 27 July 1981 to defendant Downen regarding an incident at a 4-H Club event sponsored by the Madison County AESC wherein defendant Coley referred to a black child as a "nigger".

(f) a written complaint dated 22 October 1981 addressed to defendant Shearon wherein plaintiff complained of black business persons and entities being excluded from a list to be contacted in connection with the sponsorship and fund raising for Farm-City Week.

(g) the subsequent written complaint by plaintiff to defendant Shearon in October 1981 regarding the failure and refusal of defendant Shearon to involve black persons on the program of said Farm-City Week.

7. Following said complaint of plaintiff about the Coley-"nigger" incident, all of individual defendants set about or, on information and belief, conspired to set about

a course of events calculated and designed to result in the plaintiff's removal from defendant AES. It was a part of said conspiracy that defendants, Downen, Luck and Shearon seized upon an incident which occurred in June 1981 wherein the plaintiff, while off duty, had protested about eight racially insulting signs casting racial slurs upon black persons which were placed in the business windows of defendant Murray, and conspired with defendants Murray and Korwin, to solicit and secure a letter from Korwin to Downen accusing plaintiff of referring to Mr. Murray as a "white racist and other racially oriented slurs" as a means of adversely affecting plaintiff's employment. Pursuant to this conspiracy said letter, stating falsely that plaintiff threatened Mr. Murray by saying: "I hope I catch you out somewhere, because I'll be waiting", and other false statements, was sent by Korwin to Downen and Downen then called plaintiff in on 5 August 1981 and placed a letter in plaintiff's file reprimanding him for "unacceptable job behavior" on 5 August 1981. Although a copy of plaintiff's complaint letter of 27 July 1981 was sent by defendant Downen to defendant Coley, so far as plaintiff was made aware defendant Coley was not required to answer same and no action was taken against Coley in response to said complaint. Thereafter, on information and belief, defendants Downen, Luck and Shearon, conspired with defendants Donnell, Johnson, Smith, Hopper and Cathey, whereby meetings of the Madison County AESC were held on 17 and 27 August 1981 in which it was proposed to recommend to defendant Downen that plaintiff be removed as an Extension Agent and Shearon privately went to one or more of said AESC members requesting them to vote for said removal. The two black members, Ivey and Boone, refused to do so, while all four of the defendant white members, two of whom were rel-

atives by marriage of defendant Coley, voted to recommend plaintiff's removal.

8. It was also a motivation of defendants' actions and/or a part of said conspiracy that one or more of the individual defendants were aware of and opposed to efforts which plaintiff had been making, including a suit in Federal Court, to secure the rights of membership and golf privileges in various racially, segregated, exclusively white, country clubs in Gibson and Madison County, Tennessee, and all of the defendants, on information and belief, desired and sought to remove plaintiff from his employment and to damage or destroy him because of his efforts to eliminate racial discrimination in that regard.

9. Plaintiff sought and obtained a recorded conference with defendant Downen and his counsel on 12 October 1981 specifically requesting that said defendant: (a) remove said reprimand of 5 August 1981 regarding the Murray incident from his personnel file; (b) redress plaintiff's complaint against defendant Coley contained in his letter dated 27 July 1981; and (c) cause certain on-going harassment of plaintiff by his immediate supervisor, defendant Shearon, to be discontinued. Said harassment included as of that time such disparate treatment as Shearon demanding that plaintiff produce mileage books when white employees, similarly situated, were not and had not been required to produce or keep same in that manner. Defendant Downen said substantially nothing during said conference and, on information and belief, shortly afterwards made a personal visit to Jackson. Following his visit to Jackson the harassment intensified in the form of discriminatory job assignments, unjustified fault finding, and open attempts by defendant Shearon to establish and place pretextual supervisory complaints in plaintiff's personnel

record on which to base a false claim of inadequate or unsatisfactory job performance. Plaintiff's employment record of 15 years with AES had been unblemished up to the time of his said oral protest against racial discrimination in June 1981 at the office of defendant Murray and his written protest letter of 17 July 1981 about the use by defendant Coley, of a racial epithet toward a black child in a 4-H demonstration proceeding. Subsequently, on 5 November 1981 defendant Downen wrote letters to plaintiff and his counsel officially condoning and attempting to justify the use of racial slurs by defendants, Murray and Coley, refusing to remove defendant Coley as a livestock demonstration judge in AESC proceedings and insisting on continuing the reprimand of plaintiff for his protest of both the Murray and Coley incidents.

10. Shortly afterwards, defendant Shearon attempted to wrap up his campaign of occupational vilification against plaintiff by falsely charging him with the failure to carry out a specific assignment on surveying small farmers throughout Madison County and stating that his over-all job performance was inadequate for the calendar year. Utilizing that letter and said previous letters regarding the Murray and Coley incidents as a basis, defendant Downen then wrote to plaintiff a letter dated 18 December 1981, proposing to terminate his employment immediately on the basis of same and of the alleged recommendation of the Madison County AESC.

11. Plaintiff filed a contest and demanded a hearing under the Uniform Administrative Procedures Act of Tennessee of said action of the defendants in charging him with inadequate or unsatisfactory job performance and job behavior and proposing to discharge him, and of defendant Downen's action in refusing to remove from his personnel file Downen's said letters of 5 August 1981

and 5 November 1981, and defendant Downen's refusal to respond to plaintiff's complaint against defendant Coley or to order plaintiff's said supervisor to stop harassing him because of his race. However plaintiff avers that said harassment continues as of this very day and that, despite said demand for hearing, the defendants are now treating plaintiff as if he were already discharged. His job assignments in effect have been withdrawn in that defendant Shearon has refused to hold the usual office conferences with him for several weeks and, on information and belief, the entire Madison County community has been informed by defendants that plaintiff is discharged and preparations are being made to select his successor. As a result of said actions of defendants, plaintiff has been and is being subjected to loss of professional standing, reputation, experience and development; and to untold humiliation, pain and agony, loss of sleep and suffering which can never be restored or redressed by mere payment of damages and which will injure him irreparably unless he is granted immediate injunctive relief against the actions of the defendants as set out in the above paragraph 5 to 11, both inclusive, which were all made and done pursuant to defendants' historical and continuing policy of racial discrimination against black staff personnel and citizens.

12. Plaintiff has filed a formal complaint with the EEOC against said racial discrimination but will ask for a suit letter because of the lack of time for adequate EEOC investigation and disposition of same and because of said need for immediate injunctive relief.

13. Plaintiff alleges that the actions or omissions of the defendants as outlined hereinabove including but not limited to their said false allegations against him on account of his complaints, actions, speech or protests

against racial discrimination deprive him of rights secured by the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C., Secs. 1981, 1983, 1985, 1986 and 1988 and defame his character and professional reputation and have caused and will cause him professional damage and personal injury as set out above; that same were done deliberately and/or pursuant to a conspiracy on the part of one or more of said defendants to injure him because he is a black person and/or because of his said protests against said racial discrimination, segregation and/or slurs and that he is therefore entitled to damages, both compensatory and punitive.

14. Plaintiff further avers that the imposition of said racially motivated discrimination and segregation upon and against plaintiff and other black persons, including the persons entitled to receive the benefit of said AES program, imposes upon plaintiff and said class a badge of slavery, denies, abridges and intimidates, coerces and interferes with them in the exercise of their rights to free speech and freedom of expression; deprives them of due process of law and equal protection of law and of their statutory rights as set out hereinabove, and constitutes such egregious discrimination against them as to entitle the class as well as plaintiff to said compensatory and punitive damages as hereinafter prayed.

15. There is between the parties an actual controversy as hereinbefore set forth.

WHEREFORE plaintiff respectfuly prays that the Court advance this case on the docket and order a speedy hearing of same according to law, and after such hearing:

1. Issue a Temporary Restraining Order And/Or Preliminary Injunction requiring the defendants and each of them to:

(a) immediately refrain and desist from any type of action whatsoever seeking to discharge, withdraw the job assignment or opportunities of or racially discriminate against or harass the plaintiff in any manner in the enjoyment and performance of his duties as an Associate Agricultural Extension Agent; and to promote plaintiff and provide equal pay and other terms and conditions of employment to plaintiff, including but not limited to back pay.

2. That the Court set this case for hearing at an early date and certify same as a class action.

3. That upon the final hearing this Court declare and determine the rights of plaintiff and the class he represents as claimed in this complaint and enter a Decree granting plaintiff and said class all the permanent injunctive relief against the defendants and each of them, their agents, employees and successors, as set forth hereinabove in paragraph 3, 4 and 11 in the body of this Complaint.

4. That the plaintiff have and recover of each and every one of the defendants damages in sum of Five Hundred Thousand ($500,000.00) Dollars for compensatory damages and Five Hundred Thousand ($500,000.00) Dollars for punitive damages, totaling One Million ($1,000,000.00) Dollars.

5. That plaintiff and all class members be awarded back pay and/or damages.

6. Plaintiff prays that this Court will award reasonable counsel fees to his attorneys for services rendered and to be rendered in this case and allow this plaintiff his reasonable costs herein and grant such further, other, additional or alternative relief as may appear to the Court to be equitable and just.

DEFENDANTS' MOTION TO DISSOLVE RESTRAINING ORDER TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT

Filed February 18, 1982

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE JACKSON DIVISION

(Title Omitted in Printing)

The University of Tennessee, The University of Tennessee Institute of Agriculture, The University of Tennessee Agricultural Extension Service, Dr. Edward J. Boling, University of Tennessee President, Dr. Willis W. Armistead, University of Tennessee Vice President for Agriculture, Dr. M. Lloyd Downen, University of Tennessee Dean of the Agricultural Extension Service, Mr. Haywood W. Luck, District Supervisor, UT Agricultural Extension Service, and Mr. Curtis Shearon, Madison County Extension Leader, (herein called "University of Tennessee Defendants") move the Court as follows:

A. Dissolve restraining order, entered ex parte on January 19, 1982, enjoining defendants from taking any further personnel action against plaintiff.

B. Dismiss this action as to them because the complaint fails to state a claim against said defendants upon which relief can be granted for the following reasons:

1. Plaintiff's complaint is premature and fails to state a justiciable claim because (a) this action is not

ripe for judicial review and (b) the Court should abstain from reviewing this case because of the pending evidentiary, trial type due process hearing afforded and requested by plaintiff under the contested case provisions of The Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-108, et seq.;

2. Plaintiff does not meet the jurisdictional or criterial prerequisite for injunctive relief;

3. The Court lacks jurisdiction over The University of Tennessee Defendants under 42 U.S.C. § 1983 and 2000d and e because (a) The University of Tennessee is not a person under 42 U.S.C. § 1983; (b) the UT defendants are not personally liable to plaintiff for monetary damage because all of them possess either absolute immunity or a qualified good faith immunity, and (c) the complaint fails the jurisdictional prerequisite for a Title VII action.

C. Alternatively, The University of Tennessee Defendants move the Court for summary judgment in their favor dismissing the action as to them on the grounds that the pleadings and affidavits of Dr. Edward J. Boling, Dr. W. W. Armistead, Dr. M. Lloyd Downen, Mr. Haywood Luck, and Mr. Curtis Shearon, hereto annexed, show that there is no genuine issue as to any material fact and that these defendants are entitled to judgment as a matter of law.

DISCIPLINARY CHARGE LETTER

Filed February 18, 1982

FROM M. LLOYD DOWNEN, DEAN OF
AGRICULTURAL EXTENSION SERVICE
TO PLAINTIFF

Dated December 18, 1981

Dear Mr. Elliott:

I have received a copy of Mr. Curtis Shearon's December 9, 1981 letter regarding your job performance in which Mr. Shearon states that your over-all job performance has been inadequate for this calendar year.

As you know, I have personally given you two written warnings this year regarding your job behavior and performance. Moreover, as you also know the Madison County Agricultural Extension Committee has recommended to me that you be removed from Madison County due to your inadequate job performance.

Due to the serious allegations and incidents of inadequate job performance and inadequate job behavior which have continued this year, I have decided to propose that your employment with The University of Tennessee Agricultural Extension Service be terminated for inadequate job performance and inadequate job behavior.

You have a right to request a hearing to contest these charges of inadequate job performance and job behavior. If you desire to contest these charges, you must file a written request for a hearing with the Business Office within five working days from receipt of this letter. Please send a copy of your hearing request to me.

If you do not request a hearing within five days, the charges of inadequate job performance and inadequate job behavior shall remain uncontested and your employment shall be terminated.

If you do request a hearing, you have the option to select the University's internal hearing mechanism as delineated in Section 500 of the Institute of Agriculture's Personnel Procedure. If you select this hearing procedure, the Director of Business Affairs shall convene a hearing panel to rule on the validity of the proposed discharge. If you choose this procedure, you must notify me and the Business Office at least three days prior to the hearing if you desire to be represented by an attorney. A copy of this internal hearing procedure is attached hereto for your study.

You also have an option to choose a hearing under the contested case provisions of The Uniform Administrative Procedures Act. If you choose this procedure, the University's Vice President for Agriculture will appoint the necessary hearing panel or hearing examiner to hear this case. The hearing examiner will make proposed findings and conclusions to the Vice President for Agriculture who shall render the final decision.

I am enclosing a waiver form, which if you choose the University's internal hearing, you are to return to me indicating that you waive any right to a hearing under The Uniform Administrative Procedures Act. You only have the right to one hearing. Therefore, if you desire a hearing you must decide which type of hearing you want. Basically, the University's internal hearing is more informal than the procedure under The Uniform Administrative Procedures Act.

At either type hearing, the University shall have the burden of proving the charges by a preponderance of the evidence. If either of the charges is sustained, your employment will be terminated. If the charges are not sustained, your employment with the University shall continue.

In the event your employment is terminated, you have the right under the University's internal hearing to appeal the hearing panel's findings to the Vice Fresident for Agriculture, and subsequently to the University President and Board of Trustees if necessary. The decision of the Vice President for Agriculture under The Uniform Administrative Procedures Act is final, and can only be reviewed in court in accordance with the terms of The Uniform Administrative Procedures Act, the pertinent portions of which are attached hereto.

If you do elect a hearing to contest these charges, we shall be glad to establish a hearing date which will not inconvenience you.

PLAINTIFF'S MOTION FOR TRO AND/OR A TEMPORARY STAY OF THE AGENCY ORDER

Filed October 24, 1983

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE JACKSON DIVISION

(Title Omitted in Printing)

Now comes the plaintiff, Robert B. Elliott, and moves this Court for a temporary restraining order and/or temporary stay of the decision of the Administrative Law Judge and the order of the University of Tennessee Agricultural and Extension Service issued by its Vice President, W. W. Armistead, on 1 August 1983 wrongfully tranferring the plaintiff's job assignment from Madison to Shelby County for one year and unlawfully placing the plaintiff in the unclassified service for one year. Plaintiff herein seeks an order temporarily preserving the status quo until this matter can come on for hearing upon plaintiff's simultaneously filed motion for preliminary injunction. Said order herein requested is one restraining all defendants in the captioned case, their agents, employees and all persons acting in concert or participation with them, pending hearing on preliminary injunction before this Court under Rule 65, Federal Rules of Civil Procedure, as follows:

1. From reassigning and/or further maintaining the reassignment of plaintiff from his position as Associate County Extension Agent for Madison County to an unclassified position as Extension Agency at large in Shelby County for an entire year as set forth in said agency decision, implemented by defendants;

2. From unlawfully placing and/or further maintaining the plaintiff in the unclassified service or on "probation" for a year and/or from taking any job action against the plaintiff upon the basis of, or as a result of, his unprotected status;

3. From taking any job action whatsoever, including the projected or existing reassignment for a year and the proposed or existing relegation to the unclassified service for a year, against the plaintiff;

4. Requiring the defendants, to the extent that the defendants have already discriminatorily and unlawfully begun to alter the status quo, to immediately restore the plaintiff to the status quo as a full-fledged *classified* employee of defendant and an Associate Extension Agent for Madison County; and

5. Staying completely any and all enforcement of said agency decision.

As grounds for this motion, plaintiff submits the following:

1. On or about 18 December 1981, Dr. M. Lloyd Dowen, Mr. Elliott's employer, proposed to discharge Mr. Elliott for alleged inadequate job performance and inadequate job behavior. The employee appealed this proposed discharge. The specific charges, which were made known only by virtue of the Employee's Motion For A More Definite Statement, were in essence, as follows:

(a) Playing golf on duty time from 1976 to 31 July 1981.

(b) Engaging in a commercial cabinet business and other unspecified personal business during working hours.

(c) Making anonymous harassing phone calls to a resident of Gibson County when these alleged calls had nothing whatsoever to do with the Employee's job.

(d) Trespassing charges in another non-work related incident when the Employee vigorously protested a racially inflamatory sign in a business establishment.

(e) For allegedly using profanity against a member of the general public when that person referred to a black 4-H contestant as a "nigger" and stated that he was not going to award this child the prize he deserved; and for the Employee's reporting of this apparent discrimination to the appropriate authorities.

(f) Leaving work early on two specified occasions and on other unspecified occasions.

(g) Charging personal long distance phone calls on the defendants' telephone bill even though the defendants allowed this practice.

(h) For an alleged refusal to follow vague and unclear job instructions.

(i) For an alleged unspecified failure to complete job assignments.

(j) For an alleged use of profanity relating to the exact same incident alleged in Charge (e).

The Hearing Offficer sustained Charges (a), (e), (g), and (j) against the Employee and dismissed the others. As a remedy, the A.L.J. recommended that Employee be reassigned for a year during which time he had to prove his competence, etc. at the Employer's discretion.

Further, the A.L.J. rejected the Employee's defense of racial discrimination by virtue of his analysis of the Supreme Court cases of *McDonnell Douglas Corp. v. Greene*, 411 U.S. 792 (1973) and *Texas Department Of Community Afffairs v. Burdine*, 101 S.Ct. 1089 (1981). The Agency, in a cursory opinion issued on 1 August 1983, rubber stamped the decision of the Administrative Law Judge, wholly adopting said opinion as its own. See Attachment "C".

The defendants have attempted to implement the remedy by transferring him to Shelby County, placing him on probation while at the same time loading him down with extensive and unprecedented responsibilities in an effort to further damage his reputation and standing in West Tennessee as an extension agent and by creating a situation where a satisfactory rating is a virtual impossibility. The remedy placed him almost totally under the exclusive supervision of Luck and Turner, two of the very persons that the plaintiff has alleged in this lawsuit conspired to have him discharged. Turner is one of the persons who testified against him in the Administrative hearing wherein the defendants vigorously prosecuted false charges against the plaintiff in retaliation against him for his efforts to integrate all-white golf courses in Madison County and for the exercise of his First Amendment right to protest racial epithets and signs in public places. Because of said discrimination, the plaintiff is now required to drive over a hundred miles a day from his home. This extensive commuting distance, the newly acquired duties which no other extension agent is required to perform, and the strain occasioned by the job uncertainty of plaintiff having been handed over to the unfettered discretion of defendant Turner and others, all

of which the plaintiff respectfully submits were imposed upon him in an eggregious disregard for his rights as secured by the United States Constitution and Federal statute, have reached the point where the plaintiff needs the Court to intervene to protect his physical and emotional health as well as his reputation and professional standing. The defendants should not be allowed to inflict another day of said discriminatory regimen upon the plaintiff until this Court can make a preliminary determination under Rule 65, Federal Rules of Civil Procedure. See Attachment "D".

2. Said decision of the Administrative Law Judge and the agency constituted an abuse of discretion, is contrary to law, and is not supported by reliable, probative, and substantive evidence. Said Administrative Law Judge and agency have demonstrated their unwillingness and/or inability to determine objectively and impartially the constitutional and Federal statutes raised by the plaintiff in his Complaint and therefore, said decision should be stayed until this Court can make a preliminary determination of the likelihood that sucess on the merits is warranted since only this Court can exercise the Article III powers which are peculiarly applicable to those constitutional and Federal claims.

3. The plaintiff will suffer irreparable harm if the defendants are allowed to involuntarily transfer him to Shelby County and place him on probation for a year since such job action. This case which has been highly publicized in local newspapers, improperly, falsely and discriminatorily implies substandard performance, damages his professional and personal reputation and standing in the community, and, consequently, is likely to impact adversely upon the effectiveness of the service that plaintiff can be expected to render in Shelby County or any other County since his job is dependent, in large part, upon the confidence of his competence, character, and professionalism held by the community he serves. The potential for irreparable harm is further highlighted by his current unclassified status wherein the right to a due process hearing does not exist as a buffer against discriminatory and retaliatory job action. These threatened injuries cannot be adequately redressed by money damages.

4. The plaintiff can establish a strong likelihood of sucess on the merits, and, therefore, is entitled to injunctive relief.

5. The plaintiff should not have to perform the functions of a classified position without the statutorily provided protection. Consequently, the Court should afford the plaintiff this protection by restraining and prohibiting the defendants from placing the plaintiff in the unclassified service or from considering the plaintiff as on any type of "probation" pending a determination by this Court under said Rule 65, FRCP.

6. The defendants have wrongfully and discriminatorily attempted to add subjective stipulations and extrinsic requirements to the remedy ordered by the Administrative Law Judge and the agency and have failed to set forth in writing "a clearly outlined plan for evaluating performance" as required by said remedy, thereby permitting and encouraging further racial discrimination against plaintiff. As a result, the intervention of the Court is necessary to prevent irreparable harm to the plaintiff.

7. The plaintiff already has been disciplined for several of the charges upon which the decision of the Admin-

istrative Law Judge and of the Agency to transfer him and place him in the unclassified service for a year was predicated. Consequently, it is unlawful to again discipline him for these incidents. A stay of the remedy, therefore, is warranted.

8. The discipline proposed against the plaintiff by defendants was a discharge which plaintiff claims to have been the result of unconstitutional and unlawful racial discrimination. The Administrative Law Judge's and Agency's decision and remedy was equally unconstitutional and unlawful in wrongfully rejecting said claims of racial discrimination by plaintiff despite clear evidence thereof, and thereby proposing and effectuating only a "modification" of that proposed discharge into a reassignment and a placement of the plaintiff into the unclassified service or on "probation" for a year. The Court, therefore, should stay the application of the agency remedy to the plaintiff.

A fully incorporated memorandum in support is filed herewith.

DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT

Filed February 6, 1985

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE
JACKSON DIVISION

(Title Omitted in Printing)

The University of Tennessee defendants' move the court for summary judgment on the additional grounds that the pleadings, together with the final administrative order filed under the Tennessee Uniform Administrative Procedures Act Contested Cases Provisions, T.C.A. §§ 4-5-301, et seq. (filed as Attachment A to plaintiff's motion for a temporary restraining order, a copy of which is attached hereto), demonstrate that there is no genuine issue as to any material fact and that The University of Tennessee defendants are entitled to judgment as a matter of law.

JUDGMENT OF THE DISTRICT COURT

Filed May 8, 1984

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE
JACKSON DIVISION

(Title Omitted in Printing)

IT IS ORDERED AND ADJUDGED that in compliance with the Memorandum Decision entered May 2, 1984 in the above-styled case, this case is hereby DISMISSED with prejudice in favor of all defendants.